

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

| | |
|---|---|
| In re: BRUNO’S SUPERMARKETS, LLC, Debtor. | Chapter 11 Case No. 09-00634 (BCG) |
|---|---|

**ORDER (I) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING
THE SALE OF ASSETS OF DEBTOR OUTSIDE THE ORDINARY COURSE OF
BUSINESS, (II) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL
LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (III) AUTHORIZING THE
ASSUMPTION AND SALE AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES AND (IV) GRANTING RELATED RELIEF**

Upon the motion, dated April 7, 2009 (the “Sale Motion” Doc. #616), of the above-captioned debtor (the “Debtor” or “Seller”) for the entry of an order pursuant to sections 105, 363 and 365 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing the Debtor to, *inter alia*, (i) enter into that certain Asset Purchase Agreement, dated as of April 30, 2009 by and between Southern Family Markets Acquisition II LLC and Bruno’s Supermarkets, LLC (as subsequently amended, supplemented or modified, the “Agreement”, attached hereto as Exhibit A), between Debtor and Southern Family Markets Acquisition II LLC or their assignee(s) (collectively, “Purchaser”), (ii) sell substantially all of its assets free and clear of all Liens, Claims and Encumbrances¹, with such sale to be in accordance with the terms and conditions of the Agreement; (iii) assume and sell and assign certain executory contracts and unexpired leases to the Purchaser; and (iv) granting related relief; and this Court having entered an order dated April 14, 2009, as may have been amended from time to time (the “Bidding Procedures Order” and attached thereto, the “Bidding Procedures”) authorizing the Debtor to conduct, and approving the terms and conditions of, the Auction and Bidding Procedures to consider higher or otherwise better offers for the Acquired Assets, establishing a date for the Auction, and approving, *inter alia*, (i) the Bidding Procedures in

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

connection with the Auction; (ii) the form and manner of notice of the Auction and Bidding Procedures; and (iii) procedures relating to certain Acquired Contracts, including notice of proposed cure amounts; and the Court having established the date of the Sale Hearing; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; and consideration of the Sale Motion, the relief requested therein, and the responses thereto, if any, being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections, if any, to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and all other pleadings and proceedings in this case, including the Sale Motion; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtor, its estate, its creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefor; IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:²

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The Court has jurisdiction over this matter and over the property of the Debtor, including the Acquired Assets to be sold, transferred or conveyed pursuant to the Agreement, and their respective estates pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this chapter 11 case and the Sale Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Sale Motion and the basis for the

² All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Sale Motion are hereby incorporated herein to the extent not inconsistent herewith. The term "Acquired Assets" shall not include any rights in or claims relating to the pre-petition or post-petition financing provided by Regions Bank to Debtor.

approvals and authorizations herein are (i) Bankruptcy Code §§ 102, 105, 363 and 365, and (ii) Bankruptcy Rules 2002, 6004, 6006 and 9014.

E. On February 5, 2009 (the “Petition Date”), the Debtor filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued in possession and management of its businesses and properties as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

F. As evidenced by the affidavits of service and publication filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Auction, and the Sale Hearing have been provided in accordance with Bankruptcy Code §§ 102(1) and 363(b), Bankruptcy Rules 2002, 6004, 9006, 9007, 9008 and 9014, the local rules of this Court, the procedural due process requirements of the United States Constitution, and in compliance with the Bidding Procedures Order. Such notice was good and sufficient and appropriate under the particular circumstances. No other or further notice of the Sale Motion, the Auction, the Sale Hearing, or of the entry of this Order is necessary or shall be required.

G. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities. Other parties interested in bidding on the Acquired Assets were provided, upon request, sufficient information to make an informed judgment on whether to bid on the Acquired Assets.

H. The Acquired Assets are property of the Debtor’s estate and title thereto is vested in the Debtor’s estate.

I. The Debtor has demonstrated a sufficient basis requiring it to enter into the Agreement, and sell the Acquired Assets under Bankruptcy Code § 363 and such actions are appropriate exercises of the Debtor’s business judgment and in the best interests of the Debtor, its estate and its creditors.

J. The Bidding Procedures set forth in the Bidding Procedures Order were non-collusive, substantively and procedurally fair to all parties and were the result of arms length negotiations.

K. The Debtor and its professionals have complied, in good faith, in all respects with the Bidding Procedures Order. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, through marketing efforts and the sale process conducted in accordance with the Bidding Procedures Order, the Debtor (a) afforded interested prospective purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase all of the Debtor's assets, and (b) provided prospective purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Acquired Assets. The Bidding Procedures obtained the highest value for the Acquired Assets for the Debtor and its estate.

L. The offer of the Purchaser, upon the terms and conditions set forth in the Agreement, including the form and total consideration to be realized by the Debtor pursuant to the Agreement, (i) is the highest and best offer received by the Debtor; (ii) is fair and reasonable; (iii) is in the best interests of the Debtor's creditors and estate; (iv) constitutes full and adequate consideration and reasonably equivalent value for the Acquired Assets; and (v) will provide a greater recovery for the Debtor's creditors and other interested parties than would be provided by any other practically available alternative.

M. The Purchaser is a buyer in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and are entitled to the protections of Bankruptcy Code §§ 363(m) and (n) with respect to all of the Acquired Assets. The Agreement was negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud of any kind. Neither the Debtor nor the Purchaser has engaged in any conduct that would prevent the application of Bankruptcy Code § 363(m) or cause the application of or implicate Bankruptcy Code § 363(n) to the Agreement or to the consummation of the sale transaction and transfer of the Acquired Assets and Acquired Contracts to Purchaser. The Purchaser is entitled to all the protections and immunities of Bankruptcy Code § 363(m).

N. The Debtor has full corporate power and authority to execute the Agreement and all

other documents contemplated thereby, and the sale of the Acquired Assets has been duly and validly authorized by all necessary corporate authority for the Debtor to consummate the transactions contemplated by the Agreement. No consents or approvals, other than as may be expressly provided for in the Agreement, are required by the Debtor to consummate such transactions.

O. The Debtor has advanced sound business reasons for seeking to enter into the Agreement and to sell and/or assume and assign the Acquired Assets, as more fully set forth in the Sale Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtor's business judgment to sell the Acquired Assets and to consummate the transactions contemplated by the Agreement. Notwithstanding any requirement for approval or consent by any person under this Agreement, the transfer of the Acquired Assets to the Purchaser and the assumption and assignment of the Acquired Contracts is a legal, valid and effective transfer of the Acquired Assets and any Acquired Contracts.

P. The terms and conditions of the Agreement, including the consideration to be realized by the Debtor pursuant to the Agreement, are fair and reasonable, and the transactions contemplated by the Agreement are in the best interests of the Debtor's estate.

Q. Except as otherwise provided in the Agreement, the Acquired Assets shall be sold free and clear of all Liens, Claims, Encumbrances and Interests with such Liens, Claims, Encumbrances and Interests to attach to the consideration to be received by the Debtor in the same priority and subject to the same defenses and avoidability, if any, as before the Closing, and Purchaser would not enter into the Agreement to purchase the Acquired Assets otherwise.

R. The transfer of the Acquired Assets to Purchaser will be a legal, valid and effective transfer of the Acquired Assets, and, except as may otherwise be provided in the Agreement and subject to the terms thereof, shall vest Purchaser with all right, title and interest of the Debtor to the Acquired Assets free and clear of any and all Liens, Claims, Encumbrances and Interests. Except as specifically provided in the Agreement or this Order, the Purchaser shall not assume or become liable for any Liens, Claims, Encumbrances and Interests relating to the Acquired Assets being sold by the Debtor.

S. The transfer of the Acquired Assets to the Purchaser free and clear of all Liens, Claims, Encumbrances and Interests will not result in any undue burden or prejudice to any holders of any Liens, Claims, Encumbrances and Interests as all such Liens, Claims, Encumbrances and Interests of any kind or nature whatsoever shall attach to the net proceeds of the sale of the Acquired Assets received by the Debtor in the order of their priority, with the same validity, force and effect which they now have as against the Acquired Assets and subject to any claims and defenses the Debtor or other parties may possess with respect thereto. All persons having Liens, Claims, Encumbrances (except for Permitted Encumbrances) or Interests of any kind or nature whatsoever against or in the Debtor or the Acquired Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such Liens, Claims, Encumbrances (except for Permitted Encumbrances) or Interests against the Purchaser, any of its assets, property, successors or assigns, or the Acquired Assets.

T. The Debtor may sell the Acquired Assets free and clear of all Liens, Claims, Encumbrances and Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in Bankruptcy Code § 363(f) has been satisfied. Those (i) holders of Liens, Claims, Encumbrances and Interests and (ii) nondebtor parties, who did not object, or who withdrew their objections, to the sale of the Acquired Assets and the Sale Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2). All objections to the Sale Motion have been resolved or overruled, except for objections related to Cure Amounts, which shall be preserved. Those holders of Liens, Claims, Encumbrances and Interests who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Liens, Claims, Encumbrances and Interests, if any, attach to the proceeds of the sale of the Acquired Assets ultimately attributable to the property against or in which they claim or may claim any Claims, Encumbrances and Interests, with such Claims, Encumbrances and Interests being subject to treatment as may be prescribed by separate order of this Court.

U. Not selling the Acquired Assets free and clear of all Liens, Claims, Interests and Encumbrances would adversely impact the Debtor's estate, and a sale of the Acquired Assets other

than one free and clear of all Liens, Claims, Interests and Encumbrances would be of substantially less value to the Debtor's estate.

V. The Debtor and the Purchaser will satisfy in connection with the subsequent assumption and assignment pursuant to the Purchaser's Option Rights, to the extent necessary, the requirements of Bankruptcy Code § 365, including Bankruptcy Code §§ 365(b)(1)(A), (B) and 365(f), in connection with the sale and the assumption and assignment of the Assigned Contracts.

W. The Acquired Contracts are assignable notwithstanding any provisions contained therein to the contrary. The Debtor has or will provide for the cures and/or other payments or actions required to assume and assign the Acquired Contracts to the Purchaser.

X. In the absence of a stay pending appeal, the Purchaser will be acting in good faith, pursuant to Bankruptcy Code § 363(m), in closing the transactions contemplated by the Agreement at any time on or after the entry of this Order.

Y. The transactions contemplated under the Agreement do not amount to a consolidation, merger or de facto merger of the Purchaser and the Debtor and/or the Debtor's estate, there is not substantial continuity between the Purchaser and the Debtor, there is no continuity of enterprise between the Debtor and the Purchaser, the Purchaser is not a mere continuation of the Debtor's or its estate, and the Purchaser does not constitute a successor to the Debtor or its estate.

Z. The sale of the Acquired Assets outside of a plan of reorganization pursuant to the Agreement neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. The sale does not constitute a sub rosa chapter 11 plan.

AA. Pursuant to Section 12.8 of the Agreement, and subject to Section 12.9 of the Agreement, the Debtor is providing the Purchaser with a release of claims described therein and the Purchaser is providing fair value for the release.

BB. The total consideration provided by the Purchaser for the Acquired Assets is the highest and best offer received by the Debtor, and the Purchase Price constitutes (a) reasonably

equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, for the Acquired Assets.

CC. Time is of the essence in consummating the sale. In order to maximize the value of the Acquired Assets, it is essential that the sale of the Acquired Assets occur within the time constraints set forth in the Agreement. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

DD. The Purchaser shall have no obligations with respect to any liabilities of the Debtor other than the Assumed Liabilities and its obligations under the Agreement.

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Sale Motion is granted, subject to the terms and conditions contained herein.

2. All objections, responses, and requests for continuance concerning the Sale Motion are resolved or preserved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response or request for continuance was not otherwise withdrawn, waived, settled, or expressly preserved by the terms of this Order, it, and all reservations of rights contained therein, are overruled and denied.

3. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with 11 U.S.C. § 102(1) and Bankruptcy Rules 2002, 6004 and 6006.

Approval of Sale

4. The sale of the Acquired Assets, the terms and conditions of the Agreement (including all schedules and exhibits to be agreed upon by the parties to the Agreement pursuant to Section 12.7 of the Agreement and affixed thereto), the bid by the Purchaser and the transactions contemplated thereby be, and hereby are, authorized and approved.

5. The sale of the Acquired Assets and the consideration provided by the Purchaser under the Agreement are fair and reasonable and shall be deemed for all purposes to constitute a

transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

6. The Purchaser is hereby granted and is entitled to all of the protections provided to a good faith buyer under Bankruptcy Code § 363(m), including with respect to the transfer of the Acquired Contracts as part of the sale of the Acquired Assets pursuant to Bankruptcy Code § 365 and this Order and any Supplemental Sale Order.

7. The Debtor and the Purchaser shall be, and hereby are, authorized and directed to fully assume, perform under, consummate and implement the terms of the Agreement together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Agreement, this Order and sale of the Acquired Assets contemplated thereby including, without limitation, deeds, assignments, stock powers and other instruments of transfer, and to take all further actions as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession any or all of the Acquired Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the Agreement, without any further corporate action or orders of this Court. Neither the Debtor nor the Purchaser shall have any obligation to proceed with the Closing of the Agreement until all conditions precedent to its obligations to do so have been met, satisfied or waived.

8. The Debtor, the Purchaser, and each other person or entity having duties or responsibilities under the Agreement, any agreements related thereto or this Order, and their respective directors, officers, employees, members, agents, representatives, and attorneys, are authorized and empowered, subject to the terms and conditions contained in the Agreement, to carry out all of the provisions of the Agreement and any related agreements; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Agreement, and any related agreements; to take any and all actions contemplated by the Agreement, any related agreements or this Order, including, without limitation the change of the Debtor's name; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases,

indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary or appropriate to implement, effectuate, and consummate, the Agreement, any related agreements and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. The secretary or any assistant secretary of the Debtor shall be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtor (or, consistent with the Agreement, the Purchaser) are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the Agreement, any related agreements and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtor may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the limited liability company laws of the State of Delaware and all other applicable business corporation, trust, and other laws of the applicable governmental units with respect to the implementation and consummation of the Agreement, any related agreements and this Order, and the transactions contemplated thereby and hereby.

9. Effective as of the Initial Closing Date and each applicable Subsequent Closing Date, as the case may be, (a) the sale of the Acquired Assets by the Debtor to the Purchaser shall constitute

a legal, valid and effective transfer of the Acquired Assets notwithstanding any requirement for approval or consent by any person and shall vest Purchaser with all right, title and interest of the Debtor in and to the Acquired Assets, free and clear of all Claims, Liens, Interests and Encumbrances (except for Permitted Encumbrances) of any kind, pursuant to Bankruptcy Code § 363(f), and (b) the assumption of any Assumed Liabilities by the Purchaser shall constitute a legal, valid and effective delegation of any Assumed Liabilities to the Purchaser and shall divest the Debtor of all liability with respect to any Assumed Liabilities.

10. The sale of the Acquired Assets is not subject to avoidance pursuant to Bankruptcy Code § 363(n).

Transfer of Acquired Assets

11. Except to the extent specifically provided in the Agreement, upon the Applicable Closing, the Debtor shall be, and hereby is, authorized, empowered, and directed, pursuant to Bankruptcy Code §§ 105, 363(b) and 365, to sell the Acquired Assets to the Purchaser. The sale of the Acquired Assets shall vest Purchaser with all right, title and interest of the Debtor to the Acquired Assets free and clear of any and all Claims, Liens, Interests and Encumbrances (except for Permitted Encumbrances) and any other liabilities and claims, but subject to the Assumed Liabilities, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or known or unknown, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise, with all such Claims, Liens, Interests and Encumbrances to attach only to the proceeds of the sale (if any) with the same priority, validity, force, and effect, if any, as they now have in or against the Acquired Assets, subject to all claims and defenses the Debtor may possess with respect thereto. Following the Applicable Closing Date, no holder of any Claims, Liens, Interests and Encumbrances (except for Permitted Encumbrances) in the Acquired Assets shall interfere with the Purchaser's use and enjoyment of the Acquired Assets based on or related to such Claims, Liens, Interests and Encumbrances, or any actions that the Debtor may take in its chapter 11 case and no

person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the Agreement or this Order.

12. The provisions of this Order authorizing the sale of the Acquired Assets free and clear of Liens, Claims, Encumbrances and Interests, other than Assumed Liabilities and Permitted Encumbrances, shall be self-executing, and neither the Debtor nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order. However, the Debtor and the Purchaser, and each of their respective officers, employees and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtor or the Purchaser deems necessary or appropriate to implement and effectuate the terms of the Agreement and this Sale Order. Moreover, effective as of the Applicable Closing, the Purchaser, their successors and assigns, shall be designated and appointed the Debtor's true and lawful attorney and attorneys, with full power of substitution, in the Debtor's name and stead, on behalf and for the benefit of the Purchaser, its successors and assigns, to demand and receive any and all of the Acquired Assets and to give receipts and releases for and in respect of the Acquired Assets, or any part thereof, and from time to time to institute and prosecute in the Debtor's name, for the benefit of the Purchaser, their successors and assigns, any and all proceedings at law, in equity or otherwise, which the Purchaser, their successors and assigns, may deem proper for the collection or reduction to possession of any of the Acquired Assets, and to do all acts and things with respect to the Acquired Assets which the Purchaser, their successors and assigns, shall deem desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Debtor.

13. On or before the Applicable Closing Date, the Debtor's creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release any Encumbrances of any kind against the Acquired Assets, as such Encumbrances may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents or agreements evidencing any Liens, Claims, Encumbrances or Interests in or against the Acquired Assets shall not have delivered to the Debtor prior to the Applicable Closing after request

therefor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens, Claims, Encumbrances or Interests that the person or entity has with respect to the Acquired Assets, the Debtor is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Acquired Assets prior to the Applicable Closing, and the Purchaser is authorized to file such documents after the Applicable Closing. Except as otherwise provided in the Agreement or Schedules thereto, on the Applicable Closing Date, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release their respective Interests or Claims against the Acquired Assets, if any, as may have been recorded or may otherwise exist.

14. To the greatest extent available under applicable law, the Purchaser shall be authorized, as of the Applicable Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtor with respect to the Acquired Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Applicable Closing Date, to the extent included in the Acquired Assets. Without limiting the generality of the foregoing, the Debtor is expressly authorized to enter into the Advisory Services Agreement or other transition documents necessary to facilitate the operations of the Purchaser under the Agreement.

15. Except as otherwise provided in the Agreement and subject to the terms thereof, all of the Debtor's interests in the Acquired Assets under the Agreement shall be, as of the Initial Closing Date and upon the occurrence of the Initial Closing or upon a Subsequent Closing (as may apply), transferred to and vested in the Purchaser. Upon the occurrence of the Initial Closing and each Subsequent Closing, this Order or any applicable Supplemental Sale Order, as the case may be, shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Acquired Assets acquired by the Purchaser under the Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Acquired Assets to the Purchaser.

16. Except as expressly provided in the Agreement or this Order, (a) the Purchaser is not assuming nor shall it or any affiliate of Purchaser be in any way liable or responsible, as a successor or otherwise, for (i) any liabilities, debts, or obligations of the Debtor in any way whatsoever relating to or arising from the Debtor's ownership or use of the Acquired Assets prior to the consummation of the transactions contemplated by the Agreement, or (ii) any liabilities calculable by reference to the Debtor's or its operations or the Acquired Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the Agreement or this Order. Except as expressly provided in the Agreement, all such liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Purchaser or any affiliate of the Purchaser.

17. Except as otherwise expressly provided in the Agreement, all persons or entities, presently or on or after the Initial Closing Date, in possession of some or all of the Acquired Assets are directed to surrender possession of the Acquired Assets to the Purchaser on the Initial Closing Date or at such time thereafter as the Purchaser may request.

Acquired Contracts

18. Each of the Acquired Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtor and sold and assigned to the Purchaser upon entry of one or more Supplemental Sale Orders with respect to Acquired Contracts listed therein, pursuant to Bankruptcy Code §§ 363 and 365, and the Purchaser's right to exclude certain Acquired Contracts from the definition of Acquired Assets in accordance with the terms of the Agreement.

19. Pursuant to Bankruptcy Code §§ 365(b)(1)(A) and (B), and except as otherwise provided in this Order, or as agreed by the Debtor and nondebtor parties to the Acquired Contracts, upon the entry of a Supplemental Sale Order assuming and assigning an Acquired Contract to the Purchaser, the Debtor shall promptly pay or cause to be paid to the parties to any Acquired Contracts the requisite Cure Cost, if any, set forth in the notice served by the Debtor on each of the parties to the Acquired Contracts, except to the extent that a Cure Cost was amended on the record of the Sale Hearing, a timely filed objection was filed and the Court determines the amount, or by other

agreement between the parties, upon the assumption and assignment thereof pursuant to any Supplemental Sale Order. Unless a timely objection was filed, which is hereby preserved, the Cure Costs are hereby fixed at the amounts set forth in the notice served by the Debtor, or the amounts set forth on the record of the Sale Hearing or by other agreement between the parties, as the case may be, and the nondebtor parties to the Acquired Contracts are forever bound by such Cure Costs.

20. On the Initial Closing Date, the Debtors shall escrow the Cure Costs as set forth in Section 8.9 of the Agreement.

21. All defaults or other obligations under the Acquired Contracts arising prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in Bankruptcy Code § 365(b)(2)) shall be deemed cured by payment of the Cure Costs.

22. Any provision in any Acquired Contract that purports to declare a breach, default or payment right as a result of an assignment or a change of control in respect of the Debtor, or that purports to declare a breach, default or payment right as a result of the solvency or financial condition of any guarantor, is unenforceable, and all Acquired Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Cost, if any. No sections or provisions of any Acquired Contract that purports to declare a breach, default or payment right or that purports to provide for additional payments, penalties, charges, or other financial accommodations in favor of the nondebtor third party to the Acquired Contracts shall have any force and effect with respect to the sale transaction and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under Bankruptcy Code § 365(f) and/or are otherwise unenforceable under Bankruptcy Code § 365(e), and no assignment of any Acquired Contract pursuant to the terms of the Agreement shall in any respect constitute a default under any Acquired Contract. The nondebtor party to each Acquired Contract shall be deemed to have consented to such assignment under Bankruptcy Code § 365(c)(1)(B), and the Purchaser shall enjoy all of the rights and benefits under each such Acquired Contract as of the applicable date of assumption without the necessity of obtaining such nondebtor party's written consent to the assumption or assignment thereof.

23. The Debtor and its estate shall be relieved of any liability for any breach of any of the Acquired Contracts occurring after the assumption and assignment pursuant to any Supplement Sale Order, pursuant to and in accordance with Bankruptcy Code § 365(k).

24. Subject to the terms and conditions in the Agreement, Purchaser shall have the right (“Option Rights”), in its discretion, from the Execution Date until 11:59 p.m. (EST) on August 1, 2009 (the “Option Period”) to (i) specifically include or exclude those Acquired Assets to be assigned to it as it shall specify in writing (the “Option Notice”) to the Debtor, whereupon such Acquired Asset shall, to the extent excluded, cease to be an “Acquired Asset” and shall become an “Excluded Asset” and thereby excluded from the Acquired Assets and (ii) identify certain Acquired Assets to be returned to Seller (excluding Inventory and Owned Real Property), which returned asset shall cease to be “Acquired Assets” under the Agreement and shall become “Excluded Assets” and thereby excluded from the Acquired Assets, provided however, such exclusions shall not result in an adjustment to the Non-Inventory Purchase Price. If the Purchaser fails to deliver an Option Notice prior to the fifteenth (15th) day immediately preceding the expiration of such Option Period in accordance with the Agreement, with respect to any portion of the Acquired Assets, except for Acquired Contracts (the “Undesignated Assets”), those Undesignated Assets shall be assigned to Purchaser and title shall pass in accordance with the Agreement at the end of the Option Period. In the event that Purchaser fails to deliver an Option Notice prior to the fifteen (15th) day immediately preceding the expiration of the Option Period with respect to an Acquired Contract, title to such Acquired Contract shall not pass to Purchaser, but shall instead cease to be an Acquired Asset and shall become an Excluded Asset for purposes of the Agreement. As soon as practicable after receiving an Option Notice that Purchaser is exercising its Option Rights to purchase and retain all or a portion of the Acquired Assets or Purchaser fails to deliver an Option Notice with respect to any portion of the Acquired Assets (excluding Acquired Contracts), the Debtor shall file, duly serve and diligently prosecute a motion in the Bankruptcy Court seeking authorization, as necessary, to assume and assign any specified Acquired Assets, as the case may be, or otherwise transfer any specified Acquired Assets, as the case may be, to Purchaser.

25. Notwithstanding the foregoing, consistent with § 365(d)(3) of the Bankruptcy Code, nothing herein relieves the Debtor of its performance obligations to the counterparties to any Acquired Contract until such Acquired Contract is assumed by and assigned to the Purchaser pursuant to the Agreement.

Liquidation Stores

26. The Agency Agreement by and between Debtor and Purchaser pursuant to which Hilco Merchant Resources, LLC will act as sub-agent to Purchaser and consultant (the “Consultant”) is hereby approved.

27. Subject to applicable state and local public health and safety laws (“Safety Laws”), and applicable tax, labor, employment, environmental, and certain consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “General Laws”), the Purchaser and the Consultant are authorized to take such actions necessary and appropriate to implement the Agency Agreement and to conduct store closing sales of the Schedule 2 Stores (the “Store Closing Sales” and each a “Closing Store”) without the necessity of a further order of this Court as provided by the Agency Agreement, including, but not limited to, advertising the Store Closing Sales through the posting of signs (including the use of exterior banners at (i) non-enclosed mall Stores, and (ii) enclosed mall Stores to the extent the applicable Store entrance does not require entry into the enclosed mall common area, use of sign walkers and street signage, in accordance with the Agency Agreement and as otherwise provided in the sale guidelines attached to the Agency Agreement (the “Sale Guidelines”).

28. The provisions of this Order shall be self-executing notwithstanding any restrictions in applicable laws or Closing Stores’ leases on the Purchaser’s or Consultant’s ability to conduct the Store Closing Sales in compliance with the Agency Agreement. Unless otherwise ordered by the Court, all newspapers and other advertising media in which the Store Closing Sales may be advertised, and all landlords are directed to accept this Order as binding authority so as to authorize Purchaser and the Consultant to consummate the Agency Agreement and to conduct the Store Closing Sales at the Closing Stores, including, without limitation, conducting and advertising of the

Store Closing Sales (at the contractual rates charged to Debtor prior to the Petition Date) in accordance with the Agency Agreement, the Sale Guidelines and this Order; and no further approval, license or permits of any governmental authority shall be required.

29. Except as expressly provided for herein or in the Sale Guidelines, no person or entity, including, but not limited to, any landlord or Federal or Local Governmental Unit shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Store Closing Sales, or the advertising and promotion (including the posting of signs and use of sign walkers) of such Store Closing Sales, and all such parties and persons of every nature and description, including landlords, utility companies and co-tenants, and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, or otherwise impeding the conduct of the Store Closing Sales and/or (b) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, Debtor, the Purchaser, Consultant, or Debtor's landlords for the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closing Sales and/or seek to recover damages for breach(es) of covenants or provisions in any lease or sublease based upon any relief authorized herein. This Court shall retain exclusive jurisdiction to resolve any such dispute, and such parties or persons shall take no action against Debtor, the Consultant or the landlords unless this Court in resolving such dispute, so orders. This Court shall hear the request of such persons or parties with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances. No Governmental Units (as defined in § 101(27) of the Bankruptcy Code) shall be bound by this injunctive provision unless it was either previously served with the Sale Motion or subsequently served with this Order, and has had an opportunity to object as provided in this Order, and failed to timely file an objection.

30. The Store Closing Sales at the Closing Stores shall be conducted by Purchaser and the Consultant without the necessity of compliance with any federal, state or local statute or ordinance, lease provision or licensing requirement affecting store closing, "going out of business," liquidation or auction sales, or affecting advertising, including signs, banners, posting of signage,

and use of sign walkers, other than Safety Laws and General Laws, except as may otherwise expressly be provided for in the Sale Guidelines. NOTWITHSTANDING THE FOREGOING SENTENCE, OR ANY OTHER PROVISION OF THIS ORDER, OR OF THE AGENCY AGREEMENT, OR OF THE SALE GUIDELINES TO THE CONTRARY, with respect solely to the Consultant's use, in conformity with the Sale Guidelines, of (i) signwalkers; (ii) interior store signage and banners; and (ii) exterior banners ("Banner and Signwalker Advertising"), (A) Consultant is unconditionally authorized to use Banner and Signwalker Advertising (except only to the extent limited by an agreement between Consultant and a landlord entered into in connection with the Store Closing Sales) notwithstanding any laws or lease provisions which purport to regulate, prohibit, restrict, or in any way limit such activity so long as such activity is undertaken by Consultant in a safe and professional manner, provided that signwalkers shall only be permitted on public property and not on the private property of any landlord or third party; (B) any person (including without limitation any landlord or Governmental Unit) who, after having received a copy of this Order, and after having been specifically advised in writing of the provisions of this Section, continues to interfere with any Banner and Signwalker Advertisement, including any action by a Governmental Unit taken against a landlord based on the activities of Consultant undertaken pursuant to this Order (other than by seeking redress to this Court as provided in this Section or as permitted by further ruling of the Court as a result thereof), shall be liable to Consultant and/or Debtor and affected landlords(s) if appropriate, for any and all damages resulting from such continued interference; and (C) this Court shall retain exclusive jurisdiction with respect to any claim or issue by any person (including without limitation any Governmental Unit or landlord) that seeks to regulate, prohibit, restrict, or in any other way limit Banner and Signwalker Advertising, or that alleges that Banner and Signwalker Advertising is not being undertaken in a safe and professional manner, with any such claim or issue to be heard by this Court on an expedited basis.

31. Except as expressly provided for in the Agency Agreement, the Store Closing Sales shall be conducted by Purchaser and the Consultant without the necessity of compliance with any federal, state or local statute or ordinance, including any Landmark ordinance, lease provision or

licensing requirement affecting store closing, “going out of business,” liquidation or auction sales, and shall be conducted by Purchaser and the Consultant notwithstanding any restrictive provision of any lease, sublease or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closing Sales, the rejection of leases, abandonment of assets or “going dark” provisions, provided, however, that nothing in this Order shall impact any objection that any of Debtor’s landlords may have to assumption, assignment or rejection of their respective lease or to any proposed cure amount or rejection damages claim in association with such assumption, assignment or rejection.

32. Except as may otherwise be specifically set forth in the Sale Guidelines, or any side agreement between the Purchaser and the subject landlord, Debtor and/or the Consultant (as the case may be), are authorized and empowered to transfer Assets among the Stores in the same schedule (which schedule is set forth in the Agreement).

33. Except as expressly provided in this Order, nothing in this Order shall be deemed to bar any Governmental Units from enforcing Safety Laws and General Laws in the applicable non-bankruptcy forum, subject to Debtor’s or Consultant’s right to assert that any such laws are not in fact Safety Laws or General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Order or otherwise, and provided further that the Governmental Unit shall in the first instance present the matter to this Court for resolution, or to request that they be permitted to proceed with the matter in the applicable non-bankruptcy forum, provided however the Governmental Unit shall provide Debtor and Consultant with reasonable notice and opportunity to cure any such alleged violation absent extenuating circumstances and/or to oppose the relief sought by such Governmental Unit; provided further, however, cessation of alleged unlawful conduct after notice shall not, in and of itself, render court action by any State moot, under any circumstances, any injunctive relief that may lie even if Debtor or the Consultant has ceased the alleged unlawful conduct. Purchaser and/or the Consultant and affected landlord do not waive the right to argue that the conduct was in compliance with this Order and/or any applicable law, or that applicable law was preempted by this Order.

34. Purchaser and Consultant are authorized to conduct the Store Closing Sales in accordance with the terms of this Order, the Sale Guidelines, the Agency Agreement, and the Safety Laws and General Laws. Provided that the Store Closing Sales are so conducted (and subject to the provisions of this Order), Debtor, the Purchaser, the Consultant, and Debtor's landlords, shall be presumed to be in compliance with any State, county, parish, or municipal or other local government's (hereinafter referred to as "Local") requirements governing the conduct of the Store Closing Sales, including but not limited to Local statutes, regulation and ordinances establishing licensing or permitting requirements, waiting periods, time limits, or bulk sale restrictions that would otherwise apply to the Store Closing Sales (collectively, the "Liquidation Sale Laws") of (i) any Local Governmental Unit (which means all Governmental Units other than the States or federal Governmental Units) served with a copy of the Motion; and (ii) any Local Governmental Unit served with this Order and who does not object pursuant to the provisions of this Order. The terms "Liquidation Sale Law" and "Liquidation Sale Laws" shall be deemed not to include any Safety Laws or General Laws. Except as provided herein with respect to Banner and Signwalker Advertising, nothing herein shall (i) exempt Debtor and/or the Consultant from compliance with any Safety Laws or General Laws, or (ii) preclude any Governmental Unit from enforcing Safety Laws or General Laws in an appropriate non-bankruptcy forum.

35. If there is a dispute (a "Reserved Dispute") over the enforceability of a Liquidation Sale Law, resolution of such Reserved Dispute will take place before this Court, as provided herein, and shall only operate prospectively.

36. Any time before the twentieth (20th) day following the service of this Order as provided for below, any Local Governmental Unit may assert a Reserved Dispute by sending a notice explaining the nature of the dispute to Debtor's, Purchaser's and Consultant's counsel. If Debtor and the objecting Local Governmental Unit (as the case may be, the "Objecting Party") are unable to resolve the Reserved Dispute within fifteen (15) days of receipt of the Objecting Party's notice, either party may file a motion with the Court requesting a resolution of the dispute ("Dispute Resolution Motion"). If such a Dispute Resolution Motion is timely filed, Debtor, Purchaser and

Consultant shall each be entitled to assert that the provisions in question are preempted by the Bankruptcy Code and/or that neither the terms of this Order nor the conduct of the Store Closing Sales violate the Liquidation Sales Law. The timely filing of a Dispute Resolution Motion, will not affect the finality of this Order or limit or interfere with the ability to conduct the Store Closing Sales. By timely filing a Dispute Resolution Motion, all Governmental Units shall be entitled to assert any jurisdictional, procedural or substantive argument that it might heretofore have been entitled to raise. Any such Dispute Resolution Motion will also be served upon any affected landlord.

37. Nothing herein shall be deemed to constitute a ruling on whether any non-bankruptcy state law, regulation or rule applicable to the Store Closing Sales is pre-empted by the Bankruptcy Code nor as to whether the automatic stay applies, nor whether this Order is a ruling with respect to which sovereign immunity applies.

38. The Purchaser and the Consultant shall not be liable for any claims against Debtor other than as expressly provided for in the Agreement and Agency Agreement.

39. Debtor, Purchaser and the Consultant and each of their respective officers, agents, employees and Consultants be, and they hereby are, authorized to execute such documents and to do such acts as are necessary or desirable to carry out the Store Closing Sales and effectuate the Agency Agreement and the related actions set forth therein.

40. The Purchaser and the Consultant shall have the right to use the Closing Stores and all related Closing Store services, furniture, fixtures, equipment and other assets of Debtor as designated hereunder for the purpose of conducting the Store Closing Sales, in accordance with the provisions of the Agency Agreement through the Sale Termination Date (as defined in the Agency Agreement).

41. The provisions of this Order and the Agency Agreement and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered confirming or consummating any plan of reorganization of Debtor, or which may be entered converting Debtor's case from chapter 11 to chapter 7 or dismissing the proceedings in this Court entirely, and the terms

and provisions of the Agency Agreement as well as the rights and interests granted pursuant to this Order and the Agency Agreement shall continue in this or any superseding case and shall be binding upon Debtor, the Purchaser, the Consultant and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of Debtor under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in these cases shall be and hereby is authorized to operate the business of Debtor to the fullest extent necessary to permit compliance with the terms of this Order and the Agency Agreement, and Purchaser and the Consultant and the trustee shall be and hereby are authorized to perform under this Agreement upon the appointment of a trustee without the need for further order of this Court. In the event a chapter 7 trustee determines that it needs further order of this Court in connection with the continued operation of the business, such motion shall be heard on an expedited basis.

42. To the extent that the disposition of the assets under the Agency Agreement would constitute the sale of an interest in a consumer credit transaction that is subject to the Truth in Lending Act or an interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2004), as amended from time to time, then the Purchaser shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.

43. Any amounts owed by the Debtor to the Purchaser under the terms of the Agency Agreement shall be and hereby are granted a first priority administrative claim under Section 503(b)(1)(A) in the Debtor's bankruptcy case, and shall be and hereby are deemed secured by valid and perfected first-priority security interests in certain items of Debtor's property in accordance with and to the extent provided in section 16.10 of the Agency Agreement as in effect as of the Execution Date pursuant to Bankruptcy Code § 364(d). The Purchaser shall not be required to file financing statements to perfect the security interests granted in this Order.

44. The Consultant is a party in interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to the Agency Agreement and the conduct of the Store

Closing Sales.

DIP Provisions

45. Debtor has acknowledged that Regions Bank (the “DIP Lender” or “Regions”) has funded the full amount of the Unwind Expenses pursuant to the Unwind Expense Commitment (as those terms are defined in the Final DIP Order, [D.I. 499] (the “Financing Order”). DIP Lender no longer has any obligation to fund any Unwind Expense and the Unwind Expense Commitment has been satisfied under the Financing Order and the DIP Loan Agreement (as defined in the Financing Order).

46. Immediately upon the Initial Closing, Debtor shall remit to DIP Lender an amount equal to the lesser of (i) all such proceeds or (ii) an amount that is sufficient to pay in full all principal, interest, fees and other charges then owed to DIP Lender under the DIP Loan Agreement and Financing Order, plus an additional amount representing DIP Lender’s reasonable estimate of fees and expense that DIP Lender may incur after the Initial Closing Date in connection with the termination of the credit facility under the DIP Loan Agreement and in connection with the its final accounting of amounts owed under the DIP Loan Agreement, plus \$250,000 as security for the Cash Management Obligations (defined below). The remittance as set forth herein is without prejudice to the DIP Lender’s right to (a) receive from Debtor payment or security for any other DIP Obligations, including, without limitation, payment or security for any indemnification or other contingent obligation as and to the extent authorized or required by the DIP Loan Agreement or the Financing Order; and (ii) to retain all of the security interest and other liens (other than any security interest and lien in the Acquired Assets, which are being sold free and clear of liens, claims, and encumbrances pursuant to this Order) granted to DIP Lender under the DIP Loan Agreement or Financing Order until Full Payment (as defined in the DIP Loan Agreement), including, without limitation, the payment of all Cash Management Obligations; provided, however, that the Debtor shall be authorized to use, sell or otherwise dispose any of its assets (other than the Acquired Assets and the Security Deposit (defined below) for so long as any Cash Management Obligations are outstanding) irrespective of any lien of DIP Lender if at the time of the use, sale or disposition there

are no DIP Obligations outstanding and payable to the DIP Lender. Upon Full Payment (as defined in the DIP Loan Agreement) and termination of the cash management systems as hereinafter defined, all liens and security interest of DIP Lender shall be released without the need for any further action and DIP Lender shall execute appropriate releases of its liens for filing of record at Debtor's expense.

47. The Debtor's use of the cash management system following the Initial Closing Date shall be subject to the following terms and conditions: (a) Regions shall be authorized to follow the instructions with respect to the transfer, handling or other disposition of any fund in the Debtor's deposit accounts, without any obligation on Regions' part to inquire as to the ownership or purpose of such funds; (b) Regions shall retain all rights of offset with respect to any funds on deposit from time to time with the Regions, regardless of whether such funds constitute property of the estate, in order to pay fees, expenses, overdrafts or other amounts at any time payable in connection with the Debtor's cash management system with the Regions; (c) Regions shall be authorized to require Debtor to maintain with Regions, as security for any banking relationship debt or other fees or charges arising from or related to the cash management system maintained by the Regions (collectively, the "Cash Management Obligations"), regardless of whether such Cash Management Obligations arise from any deposits made by Purchaser following the Initial Closing Date or withdrawals authorized by Debtor by Purchaser from any deposit account of Debtor with Regions, a cash deposit (the "Security Deposit") in an amount reasonably determined by Regions to protect it from possible losses from the incurrence of Cash Management Obligations after the Initial Closing Date (in the initial amount of \$250,000), and Regions shall retain all Liens (other than the liens released pursuant to this Order in the Acquired Assets) granted to it pursuant to the DIP Loan Agreement and the Financing Order; (d) Regions may terminate all or any part of the cash management system, including, without limitation, closing any or all deposit accounts, on June 30, 2009, or such earlier or later date as Debtor and Regions may mutually agree upon after written notice to Purchaser; and (e) continued use by Debtor of its deposit accounts and other aspects of its cash management system shall be subject to all depository and other agreements with Regions and this Court's prior order relating to such cash management system. Within ten (10) days after

Debtor's or Regions' termination of the cash management system, Regions shall remit to Debtor the balance of the Security Deposit, less any outstanding DIP Obligations.

Objections Filed

48. All objections filed in this matter relating to the Final Sale Hearing are hereby overruled, including, but not limited to the following:

Docket #813; Objection To Final Sale Hearing Filed By Angela B. Degeyter, Attorney For Bi-Lo LLC;

Docket #754; Objection To Final Sale Hearing Filed By David L. Pollack, Attorney For Aronov Realty, ABNK Properties LLC, Letson Farms Improvements LLC And Gulfdale Improvements LLC;

Docket #760; Limited Objection To Final Sale Hearing Filed By Timothy M. Lupinacci, Attorney For LaSalle Investment Management And Bayer Retail Company LLC;

Docket #761; Limited Objection To Final Sale Hearing Filed By Timothy M. Lupinacci, Attorney For BR Demopolis Portfolio LP, BR East Gadsden Portfolio LP And BR Gardendale Portfolio LP;

Docket #762; Joinder In Limited Objection To Final Sale Hearing Filed By Kimberly B. Glass, Attorney For Rochester-Mobile LLC And Salzman-Mobile LLC;

Docket #768; Joinder In Limited Objection To Final Sale Hearing Filed By Stephen B. Porterfield, Attorney For Locke Pelham LLC, Roebuck Bansal LLC, Gulf Breeze SC LLC, Village In Trussville LLC And Rainbow Plaza Associates;

Docket #776; Conditional Objection To Final Sale Hearing Filed By Jennifer A. Harris, Attorney For Inline Investments, LLC;

Docket #805; Limited Objection To Final Sale Hearing Filed By Timothy M. Lupinacci, Attorney For Fort Williams Associates, L.P. ;

Docket #806; Limited Objection To Final Sale Hearing Filed By Timothy M. Lupinacci, Attorney For Dora Supermarket Owners, LLC;

Docket #807; Limited Objection To Final Sale Hearing Filed By Timothy M. Lupinacci, Attorney For I & G Inverness Retail, LLC;

Docket #808; Limited Objection To Final Sale Hearing Filed By Timothy M. Lupinacci, Attorney For BR Demopolis Portfolio LP, BR East Gadsden Portfolio LP, And BR Gardendale Portfolio LP;

Docket #809; Limited Objection To Final Sale Hearing Filed By Timothy M. Lupinacci, Attorney For Wakefield's Inc. ;

Docket #810; Limited Objection To Final Sale Hearing Filed By Timothy M. Lupinacci, Attorney For Bayer Retail Company LLC;

Docket #814; Limited Objection To Final Sale Hearing Filed By Kimberly B. Glass,

Attorney For Rochester-Mobile LLC And Salzman-Mobile LLC; and it is further,

49. The oral Objection to the Final Sale Hearing made by Regions Bank in open court on the date set forth herein is overruled.

50. Docket #725; Motion to Expedite Hearing On Motion For Adequate Protection (Docket # 724), is hereby granted.

51. Docket #724; Motion for Adequate Protection Filed by Creditors A.I. Corte, Jr. Family Limited Partnership, Marl M. Cummings, Gulf Market Development, LLC, H&C Development Company, Inc., Jay E., LLC, Northside, Ltd., Romar (SC), LLC, Saraland Loop Road, LLC, The Extended Trust Agreement f/b/o Jay White-Spunner's Children Dated 10/31/02, The John White-Spunner Children's Trust, John Rudolph Turner, Tuttle Papock Springhill, LLC, and John White-Spunner is hereby continued until May 20, 2009.

Additional Provisions

52. As more fully set forth in Section 6.4(c) of the Agreement, as of the Execution Date, the Supply Agreement is amended such that Section 1.5 is null and void and not legally enforceable, and the Revised Payment Terms are hereby approved.

53. Each and every federal, state, and local governmental agency or department shall accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement and this Order.

54. For a period of three (3) years after the Initial Closing Date, the Purchaser will permit the Debtor and the Committee, including, without limitation, Debtor's or Committee's representatives, agents, employees, attorneys, insurers, successors and assigns, including any Liquidating Trustee appointed by the Court, to have access, at reasonable times and in a manner so as not to unreasonably interfere with the normal business operations of Purchaser or its assigns to all business and personnel records and personal property included in the Acquired Assets, to the extent still in Purchaser's possession and control, and shall provide access to the Real Property, to the extent still owned by Purchaser, to enable the Debtor (and as applicable, any of the Debtor's successors or assigns, or the Committee) to wind up its affairs, administer the bankruptcy estate,

prepare taxes, reports, respond to legal process or subpoenas, and to investigate or defend claims.

55. The Purchaser has not assumed or is otherwise not obligated for any of the Debtor's liabilities other than the Assumed Liabilities as set forth in the Agreement, and the Purchaser has not purchased any of the Excluded Assets. Consequently, all persons, Governmental Units (as defined in Bankruptcy Code § § 101(27) and 101(41)) and all holders of Claims, Liens, Interests or Encumbrances (other than Permitted Encumbrances) based upon or arising out of liabilities retained by the Debtor are hereby prohibited from taking any action against the Purchaser or the Acquired Assets to recover any Claims, Liens, Interests or Encumbrances or on account of any liabilities of the Debtor other than Assumed Liabilities pursuant to the Agreement. All persons holding or asserting any Interest in the Excluded Assets are hereby prohibited from asserting or prosecuting such Claims, Liens, Interests or Encumbrances or cause of action against the Purchaser or the Acquired Assets for any liability associated with the Excluded Assets.

56. The Purchaser is not a "successor" to the Debtor or its estate by reason of any theory of law or equity, and the Purchaser shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtor and/or its estate including, but not limited to, any bulk sales law, successor liability or similar liability except as otherwise expressly provided in the Agreement with respect to the Assumed Liabilities. Except to the extent the Purchaser assumes the Assumed Liabilities pursuant to the Agreement, neither the purchase of the Acquired Assets by the Purchaser or its affiliates, nor the fact that the Purchaser or its affiliates are using any of the Acquired Assets previously operated by the Debtor, will cause the Purchaser or any of its affiliates to be deemed a successor in any respect to the Debtor's businesses within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtor's liability under such law, rule or regulation or doctrine, or under any product warranty liability law or doctrine with respect to the Debtor's liability under such law, rule or regulation or doctrine. Purchaser and its affiliates shall have no liability or obligation under the

WARN Act (29 U.S.C. §§ 210 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act, or any foreign, federal, state or local labor, employment, or environmental law by virtue of the Purchaser's purchase of the Acquired Assets or assumption of the Assumed Liabilities.

57. At the Initial Closing, Seller will deliver to Purchaser duly and properly authorized and executed evidence (in form and substance satisfactory to Purchaser) as to the amendment of Seller's organizational documents (collectively, the "Organizational Amendments") changing Seller's name to another name which does not include any of the following words "Bruno's, Food World, Vincent's Markets, Food Fair or Food Max." Upon the Initial Closing, Seller shall file the Organizational Amendments with the applicable Secretary of State of Seller's jurisdiction of formation and in each State in which Seller is qualified or licensed to do business. Furthermore, after the Initial Closing, but subject to any license agreement or arrangement between Seller and Purchaser, Seller shall discontinue the use of its current name (and any other tradenames currently utilized by any of the Seller) and shall not subsequently change its name to or otherwise use or employ any name which includes the words "Bruno's, Food World, Vincent's Markets, Food Fair and Food Max" without the prior written consent of Purchaser. From and after the Closing, Seller covenants and agrees not to use or otherwise employ any of the trade names, corporate names, dba's or similar Intellectual Property rights utilized by Seller in the conduct of the Business, which rights shall be included in the Acquired Assets purchased hereunder.

58. On the Initial Closing Date, except to the extent expressly included in the Assumed Liabilities, pursuant to Bankruptcy Code §§ 105, and 363, all persons and entities, including, but not limited to, the Debtor, all debt security holders, equity security holders, the Debtor's employees and former employees, governmental, tax and regulatory authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors (including the Committee) asserting or holding a Lien, Claim, Encumbrance or Interest of any kind or nature whatsoever against, in or with respect to the Debtor or the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in

connection with, or in any way relating to the Debtor, the Acquired Assets, the operation of the Debtor's businesses prior to the Closing Date or the transfer of the Acquired Assets to the Purchaser, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Lien, Claim, Encumbrance or Interest against the Purchaser or any affiliate, successor or assign thereof and each of their respective current and former members, officers, directors, shareholders, limited partners, general partners, managing partners, consultants, professionals, attorneys, employees, affiliates and representatives (each of the foregoing in its individual capacity), or the Acquired Assets. For the avoidance of doubt, the foregoing shall not prevent the Debtor, its estate, successors or permitted assigns from pursuing claims, if any, against the Purchaser and/or its successors and assigns in accordance with the terms of the Agreement, including, without limitation, for any breach of the Agreement.

59. Pursuant to Section 12.8 of the Agreement and subject to Section 12.9, effective upon the Initial Closing, Seller, on behalf of itself and its estate, releases and discharges each of the Purchaser, C&S, their respective Affiliates and any of their respective directors, officers, shareholders, members, limited partners, general partners, managing partners, employees, agents and professionals (the "Purchaser Released Parties") (but excluding BI-LO, LLC and BI-LO Holdings, LLC, as subrogees), from any and all Released Claims, provided, that Seller does not release Seller's claims against Purchaser, if any, arising under or out of the Agreement or the Ancillary Documents and except as provided in Section 12.9 of the Agreement.

60. Subject to the terms of the Agreement, the Agreement and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtor and the Purchaser, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is (i) not material and substantially conforms to, and effectuates, the Agreement and any related agreements and (ii) approved by the Committee, to the extent still in existence.

61. The failure specifically to include any particular provisions of the Agreement or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it

being the intent of the Court, the Debtor and the Purchaser that the Agreement and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing.

62. No bulk sale or transfer law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the Agreement.

63. Nothing in this Order shall alter or amend the Agreement and the obligations of the Debtor and Purchaser thereunder, except as explicitly set forth herein.

64. This Order and the Agreement shall be binding upon and govern the acts of all persons and entities, including without limitation, the Debtor and the Purchaser, their respective successors and permitted assigns, including, without limitation, any Chapter 11 trustee hereinafter appointed for the Debtor's estate and any trustee appointed in a Chapter 7 case if this case is converted from Chapter 11, all creditors of any Debtor (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Acquired Assets.

65. The provisions of this Order are non-severable and mutually dependent.

66. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in the Chapter 11 Cases, or in any subsequent or converted cases of the Debtor under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Agreement or the terms of this Order.

67. Notwithstanding Bankruptcy Rules 6004, 6006 and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtor and the Purchaser are free to close under the Agreement at any time, subject to the terms of the Agreement. In the absence of any person or entity obtaining a stay pending appeal, if the Debtor and the Purchaser close under the Agreement, the Purchaser shall be deemed to have acted, and to be acting in "good faith" and shall

be entitled to the protections of Bankruptcy Code § 363(m) as to all aspects of the transactions under and pursuant to the Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

68. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Bidding Procedures Order, and the Agreement in all respects and to decide any disputes concerning this Order, and the Agreement, or the rights and duties of the parties hereunder or thereunder and any issues relating to the Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Acquired Assets and any Acquired Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Liens, Claims, Interests and Encumbrances. To the extent there are any inconsistencies between the terms of this Order and the Agreement, the terms of this Order shall control.

69. Except as set forth in the Agreement, including without limitation Sections 12.8 and 12.9, no finding or provision of this Order, including without limitation paragraphs K and L, *infra*, shall prejudice any claim or claims that the Debtor's bankruptcy estate may have against the Debtor's manager, director, parent or others in connection with or related to the sales process, excluding any claims against Purchaser Released Parties. Moreover, nothing in the immediately preceding sentence shall have an effect on any Bankruptcy Code § 363(m) protections granted herein.

70. In accordance with Section 8.9 of the Agreement, Seller has agreed to escrow Cure Costs, in the aggregate amount as set forth in Schedule 4.4(b)(v) to the Agreement, to be held by the "Title Insurance Company" and disbursed to the appropriate parties on an Applicable Closing Date in accordance with the terms and conditions of the Agreement. Land Title Company of Alabama ("Land Title") has agreed to act as the "Title Insurance Company" under the Agreement for purposes of holding the Cure Costs in escrow pursuant to the terms and conditions of Section 8.9 of the Agreement and subject to the terms and conditions of an escrow agreement in form and content reasonable acceptable to Land Title, Debtor and Purchaser (the "Escrow Agreement").

Included as material provisions of the Escrow Agreement will be requirements that the Debtor and Purchaser agree to jointly indemnify and hold Land Title harmless from any and all costs, fees and/or expenses incurred by Land Title in the performance of its duties under the Escrow Agreement, including but not limited to the payment of any court costs and/or attorneys fees incurred in connection with a dispute over the party to whom such escrowed funds are due, the payment of a reasonable fee to Land Title as consideration for the performance of its duties under the Escrow Agreement and the requirement that any payments of the Cure Costs from escrow be accompanied by joint written instructions from Debtor and Purchaser. The Debtor and Purchaser shall be, and hereby are, authorized and directed to execute, deliver and perform the Escrow Agreement with Land Title and implement the terms of the Escrow Agreement together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Escrow Agreement contemplated thereby, including, without limitation, the delivery of instructions to disburse funds held in escrow in accordance with such joint instructions upon any Applicable Closing Date or upon an earlier date to Debtor in the event the amount escrowed thereunder at any time exceeds the aggregate costs claimed by the remaining counterparties to cure all remaining Acquired Contracts pursuant to Bankruptcy Code § 365.

71. The Debtor remains responsible for and will make all payments and fulfill all obligations under its non-residential real property leases moving forward until such lease is rejected. This includes payment of the May, 2009 rent in accordance with the leases.

72. Landlords have reasonable access now and throughout liquidation to ensure protection and preservation of the space. Hilco contemplates starting the store liquidation process on the day following entry of the Sale Order.

73. Hilco and the Debtor have no right to sell any assets that are not property of the estate. Any landlord with evidence that particular furniture, fixtures, or equipment is or are titled in landlord's name should provide such information to Hilco. To the extent that there is a dispute that cannot be resolved by the parties, the parties will come back to Court.

74. Hilco agreed in open court that they will negotiate in good faith with each landlord

with regard to the store liquidation process.

75. Subject to compliance with the Initial Cap Financing and the DIP Loan Agreement, the proceeds from the sale of the Bruno's assets shall be placed in a collateralized account or in an account, notice of which will be given to the Bankruptcy Administrator, that is in compliance with the provisions of the FDIC's Transaction Account Guaranty Program.

76. Notwithstanding any provision to the contrary contained herein, all rights of landlords are preserved under the Bankruptcy Code to object to any assumption and assignment of any Acquired Contract that constitutes an unexpired lease of nonresidential real property, including but not limited to demonstration of adequate assurance of future performance.

Dated: May 4, 2009

/s/Benjamin Cohen
BENJAMIN COHEN
United States Bankruptcy Judge

This order prepared by:
Burr & Forman
205-251-3000